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 BOSA DEVELOPMENT CALIFORNIA II, INC.,
 BOSA DEVELOPMENT CALIFORNIA, INC.,
 7 IRVINE RESIDENTIAL HIGHRISE LLC, BOSA
 CALIFORNIA LLC, BOSA DEVELOPMENT
 8 CORPORATION, NATALE BOSA

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
 10

11 GEORGE J. SEROCHI, JR., AND
 VICTOR E. BIANCHINI, on Behalf of
 12 Themselves, All Others Similarly Situated
 and the General Public,

13 Plaintiffs,

14 v.

15 BOSA DEVELOPMENT CALIFORNIA
 16 II, INC., BOSA DEVELOPMENT
 CALIFORNIA, INC., IRVINE
 17 RESIDENTIAL HIGHRISE LLC, BOSA
 CALIFORNIA LLC, BOSA
 18 DEVELOPMENT CORPORATION,
 NATALE BOSA, AUSTIN McBRIDE
 19 CORPORATION d/b/a RE/MAX REAL
 ESTATE CONSULTANTS and DOES
 20 6-50, inclusive,

21 Defendants.

CASE NO. 37-2009-00096686-CU-BT-CTL

CLASS ACTION

**DEFENDANTS BOSA DEVELOPMENT
 CALIFORNIA II, INC, BOSA
 DEVELOPMENT CALIFORNIA, INC.,
 IRVINE RESIDENTIAL HIGHRISE LLC,
 BOSA CALIFORNIA LLC, BOSA
 DEVELOPMENT CORPORATION,
 NATALE BOSA'S ANSWER TO
 PLAINTIFF'S SECOND AMENDED
 COMPLAINT FOR DAMAGES AND
 EQUITABLE RELIEF**

Dept: C-60
 Judge: The Honorable Lisa A. Foster
 Trial Date: Not scheduled
 SAC: December 17, 2010

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1 Defendants Bosa Development California II, Inc., Bosa Development California, Inc.,
2 Irvine Residential Highrise LLC, Bosa California LLC, Bosa Development Corporation and
3 Natale Bosa (collectively, "Defendants") responds to Plaintiffs George J. Serochi, Jr.'s and Victor
4 E. Bianchini's (collectively, "Plaintiffs") Second Amended Complaint for Damages and
5 Equitable Relief ("SAC") as follows:

6 **GENERAL DENIAL**

7 Pursuant to California Code of Civil Procedure § 431.30(b), Defendants deny both
8 generally and specifically each and every allegation in the SAC and each and every cause of
9 action, and deny that Plaintiffs, individually, on behalf of all others similarly situated, and/or on
10 behalf of the general public, sustained any injuries or damages or is entitled to any of the relief
11 sought in the SAC. Defendants specifically deny that Plaintiffs, any alleged class member or any
12 member of the general public has been damaged in the manner alleged, or in the sum or sums
13 alleged or to be alleged, or in any manner or sum, by any act of Defendants.

14 **SEPARATE AFFIRMATIVE DEFENSES**

15 Defendants set forth below their affirmative defenses. By setting forth the affirmative
16 defenses below, Defendants do not assume the burden of proving any facts, issues or elements of
17 a claim where such burden properly belongs to Plaintiffs. For its affirmative defenses,
18 Defendants allege, upon information and belief, the following:

19 **FIRST AFFIRMATIVE DEFENSE**

20 **(Failure to State a Cause of Action – All Causes of Action)**

21 The SAC, and each cause of action, fails to state facts sufficient to constitute a cause of
22 action against Defendants.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Standing – All Causes of Action)**

25 Plaintiffs' claims are barred, in whole or in part, because they lack standing to sue for the
26 injuries and/or damages, if any, of which they now complain.

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THIRD AFFIRMATIVE DEFENSE

(Failure to State a Claim for Alter-Ego Liability –All Causes of Action)

The SAC fails to state a claim for alter ego liability against Defendants for each and every cause of action.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations – All Causes of Action)

The SAC, and each alleged claim contained therein, is barred, in whole or in part, by the applicable statute of limitations, including, but not limited to, California Code of Civil Procedure §§ 335.1, 337, 338(a), 338(d) and/or 343 and California Business & Professions Code § 17208.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages – All Causes of Action)

Plaintiffs, any class members and/or the general public, failed or refused to exercise reasonable care and diligence to avoid loss and minimize damages and therefore may not recover for losses that could have been prevented by reasonable efforts on their part, or by expenditures which might reasonably have been made. Therefore, their recovery, if any, should be reduced by the failure of them to mitigate their damages, if any.

SIXTH AFFIRMATIVE DEFENSE

(Inability to Meet Requirements to Maintain Class Action – All Causes of Action)

Plaintiffs cannot meet the requirements of Code of Civil Procedure § 382, Civil Code § 1781 and corresponding case law to maintain a class action in that the alleged plaintiff class does not have sufficient numerosity, common issues of law and fact do not sufficiently predominate, the alleged plaintiff class does not have sufficient commonality of injuries and damages, the named plaintiff does not adequately represent the alleged plaintiff class, there is no benefit to litigants or the Court in maintaining this action as a class action, and/or class action status is not superior to maintaining this action as an individual action in the normal course of the judicial system.

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SEVENTH AFFIRMATIVE DEFENSE

(Arbitration Clause – All Causes of Action)

Plaintiffs agreed that the alleged claims proceed in arbitration and that the claims be brought by individuals.

EIGHTH AFFIRMATIVE DEFENSE

(Commercial Speech Protection – All Causes of Action)

Plaintiffs' claims are barred in whole or in part because the commercial speech of Defendants were not false or misleading and is protected under the First Amendment of the United States Constitution and the California Constitution.

NINTH AFFIRMATIVE DEFENSE

(Statute Insufficiently Definite – First and Second Causes of Action)

Plaintiffs' claims are barred in whole or in part because the applicable statutes are insufficiently definite to provide adequate or fair notice of the conduct proscribed in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution and Article 1, Section 7 of the California Constitution.

TENTH AFFIRMATIVE DEFENSE

(Unconstitutionality/Due Process – First and Second Causes of Action)

The California Unfair Business Practices Act (California Business & Professions Code §§ 17200, et seq.) and the California Unfair Advertising Act (California Business & Professions Code §§ 17500, et seq.) are unconstitutional in that they violate the due process rights of Defendants and/or members of the general public.

ELEVENTH AFFIRMATIVE DEFENSE

(Proposition 64 – First and Second Causes of Action)

The passage of Proposition 64 bars each of the claims alleged in Plaintiffs' SAC.

TWELFTH AFFIRMATIVE DEFENSE

(Preemption – All Causes of Action)

Plaintiffs' claims are preempted, in whole or in part, by federal law pursuant to the Supremacy Clause of the United States Constitution.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Competition Privilege – All Causes of Action)

Any of the Defendants’ alleged actions are protected by the privilege of competition in that Defendants did not use wrongful means to advance a legitimate interest in competing in the free market.

FOURTEENTH AFFIRMATIVE DEFENSE

(Compliance with Law – First and Second Causes of Action)

Plaintiffs’ SAC fails to state a claim for unlawful conduct under Business & Professions Code §§ 17200, et seq. and 17500, et seq., because Defendants completely complied with applicable law.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Claim for Misleading or Unfair Advertising – First and Second Causes of Action)

Plaintiffs’ SAC fails to state a claim for misleading or unfair advertising under Business & Professions Code §§ 17200, et seq. and 17500, et seq., because Defendants’ advertising and marketing were not false, misleading or deceptive.

SIXTEENTH AFFIRMATIVE DEFENSE

(Justification of Practices – First and Second Causes of Action)

Defendants’ business and advertising practices alleged in the SAC are not unfair, unlawful, or fraudulent, or otherwise within the meaning of Business & Professions Code §§ 17200, et seq. and 17500, et seq., in that the practices, if any, were justified because they were made in a good faith effort to protect Defendants’ legitimate business interests.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Reliance – All Causes of Action)

Plaintiffs, any class member and/or the general public, did not rely on any marketing or advertising by or on behalf of Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Absence of Intent or Knowledge – All Causes of Action)

To the extent that Plaintiffs prove that Defendants conducted any of the allegedly

1 fraudulent activities alleged in the SAC, and while Defendants deny any such activities occurred,
2 Plaintiffs' claims are barred, in whole or in part, because Defendants had no intention or
3 knowledge, nor any reasonable grounds to know, that any such activities were untrue or
4 misleading.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 **(Good Faith – All Causes of Action)**

7 To the extent that Plaintiffs prove that Defendants conducted any of the allegedly
8 unlawful, unfair or fraudulent activities alleged in the SAC, and while Defendants deny that any
9 such activities occurred, Plaintiffs' claims are barred in whole or in part because Defendants at all
10 times acted in good faith and did not directly or indirectly perform or induce any act whatsoever
11 that would constitute a violation of any rights of the Plaintiffs or any duty owed to the Plaintiffs.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 **(No Loss Causation – All Causes of Action)**

14 Insofar as Plaintiffs or any members of the alleged class suffered any losses, those losses
15 were not caused by any act or omission committed by Defendants.

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

17 **(No Proximate Causation – All Causes of Action)**

18 Insofar as Plaintiffs or any members of the alleged class suffered any losses, those losses
19 were not proximately caused by any act or omission committed by Defendants.

20 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

21 **(Intervening Acts – All Causes of Action)**

22 Plaintiffs' damages, if any, were proximately caused by unforeseeable, independent,
23 intervening and/or superseding acts beyond the control and unrelated to any actions or conduct of
24 the Defendants.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Improper Relief Sought – First and Second Causes of Action)

The relief sought by Plaintiffs constitutes damages, not restitution or disgorgement of profits, and damages are not recoverable under Business & Professions Code §§ 17200, et seq. or 17500, et seq., as a matter of law.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law – All Causes of Action)

Plaintiffs’ claims for injunctive or other equitable relief are barred because there is an adequate remedy at law.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Mootness – All Causes of Action)

Plaintiffs’ claims for injunctive or other equitable relief are barred as moot in whole or in part.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Claim for Punitive Damages – All Causes of Action)

Plaintiffs have failed to state a claim against Defendants upon which relief may be granted for punitive or exemplary damages. No act or omission of Defendants was malicious, willful, reckless, outrageous, unconscionable, despicable, contemptible, with conscious disregard for the rights or safety of Plaintiffs or others, or with malice, fraud and/or oppression as defined in California Civil Code § 3294, and Plaintiffs’ SAC fails to state a claim upon which relief may be granted for punitive or exemplary damages. Plaintiffs’ SAC seeks damages in excess of those permitted by law. Defendants assert any statutory or judicial protection from punitive damages, and any and all standards or limitations regarding the determination and enforceability of punitive damages, as are available under California law.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Claim for Fees, Costs and Interest – All Causes of Action)

Plaintiffs’ SAC fails to state a claim against Defendants upon which relief may be granted as to costs, attorneys’ fees, expenses, pre-judgment interest, post-judgment interest, disgorgement and restitution.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Improper Defendant –All Causes of Action)

Defendants from whom Plaintiffs did not purchase property are not proper defendants because they engaged in no acts, omissions or other conduct that which could have given rise to any claims by Plaintiffs.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Unjust Enrichment – All Causes of Action)

Plaintiffs would be unjustly enriched by recovery against Defendants.

THIRTIETH AFFIRMATIVE DEFENSE

(No Privity of Contract – Third and Fourth Causes of Action)

Any recovery by Plaintiffs is barred because Plaintiffs were never in privity of contract with Defendants from whom they did not purchase property.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(No Injury – First and Second Causes of Action)

Plaintiffs’ causes of action under Business & Professions Code §§ 17200, et seq. and 17500, et seq., are barred because Plaintiffs have not suffered any injury in fact in the unfair competition context or in the false advertising context, respectively.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Estoppel – All Causes of Action)

Each and every cause of action in the SAC is barred by the doctrine of estoppel.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Waiver – All Causes of Action)

Each and every cause of action in the SAC is barred by the doctrine of waiver.

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands – All Causes of Action)

Each and every cause of action in the SAC is barred by the doctrine of unclean hands.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Doctrine of Laches – All Causes of Action)

Each and every cause of action in the SAC is barred by the doctrine of laches.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Lack of Deception – All Causes of Action)

Plaintiffs’ claims are barred in whole or in part because Defendants’ practices or advertisements were not likely to mislead.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Not Basis of Bargain – Third Cause of Action)

Plaintiffs’ claims are barred in whole or in part because Plaintiffs did not rely on any of the misrepresentations or omissions allegedly made by Defendants in deciding to purchase the property.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Exclusion or Modification of Express Warranty – Third and Fourth Causes of Action)

Plaintiffs’ claims are barred in whole or in part because Defendants, by words or conduct, limited their representations regarding the property.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Reservation – All Causes of Action)

Defendants presently have insufficient knowledge and/or information with which to form a belief as to whether or not it may have additional as yet unstated affirmative defenses.

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1 Defendants reserve the right to assert additional affirmative defenses in the event that discovery
2 and/or investigation indicate that additional affirmative defenses would be appropriate.

3 WHEREFORE, these answering Defendants pray that:

- 4 1. Plaintiffs and/or any alleged class members take nothing by way of the SAC;
- 5 2. Defendants be awarded a judgment of dismissal with prejudice;
- 6 3. Defendants be awarded costs of the suit herein incurred;
- 7 4. Defendants be awarded reasonable attorneys' fees to the maximum extent allowed
8 by law; and
- 9 5. For such other and further relief as the Court deems proper and just.

10 Dated: March 23, 2011

11 DLA PIPER LLP (US)

12
13 By 

14 MERRILL F. STORMS, JR.
15 ROBERT W. BROWNLIE
16 KAREN S. CHEN
17 Attorneys for Defendants
18 BOSA DEVELOPMENT CALIFORNIA II,
19 INC., BOSA DEVELOPMENT CALIFORNIA,
20 INC., IRVINE RESIDENTIAL HIGHRISE
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